

APR-20-2007 10:56 FROM: BOSS CONSTRUCTION 18157268931

TO: 630 759 4841

P.1/1

## CONTRACTOR - COMMERCIAL CREDIT APPLICATION



(Please Print in Capital Letters)

## CREDIT DEPARTMENT

NET 60 DAYS

FOR STORE/OFFICE USE ONLY

Store Name:	08-11
Store Number:	
Acct. Number:	11690

APR 23 2007

Applicant/Business Name: BOSS CONSTRUCTION		Phone: 815 1726-1400		
Business Address: 1904 GARNET CT		Fax: 815 1726-8931		
City, State, Zip Code: NEW Lenox, IL 60451		E-mail: _____		
Billing Address: SAME		<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation		
Previous Business Address: _____		_____		
Name of Owner, General Partner or President: STEVE SMITH		Name of other Partner or Vice President: _____		
Social Security Number: _____		Social Security Number: _____		
Address: 1904 GARNET CT		Address: _____		
City, State, Zip Code: NEW LENOX, IL 60451		City, State, Zip Code: _____		
Previous Address: _____ (If less than one year of present address, include previous)		Previous Address: _____		
Date Business Started: 01/01/96 State of Incorporation or Partnership: IL		Fed. Tax ID# 36-4229779		
Type of Business: <input type="checkbox"/> General Contractor <input type="checkbox"/> Subcontractor <input checked="" type="checkbox"/> Remodeler <input type="checkbox"/> Other: _____		Number of homes built in the last 3 years: _____		
Operation: <input type="checkbox"/> Speculation % <input type="checkbox"/> Contract % Expected monthly credit utilization: %		_____		
Number of years home building experience: _____		Title/Position/Duties: _____		
Financial Statement Available? <input type="checkbox"/> Yes <input type="checkbox"/> No		Have you ever filed for Bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, When? _____		
BANK REFERENCES				
Primary Bank: PRIVATE BANK	BRANCH/VIEW: IL	PHONE: (708) 599-0100		
Type of Account: Checking Account No. 4-E-S	CD#	SAVINGS ACCOUNT NO. _____		
Officer to Contact: DARRYL FEDERER	Line of Credit: Amount \$ _____	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		
Secondary Bank: _____	CD#	PHONE NO. _____		
Type of Account: Checking Account No. _____	CD#	SAVINGS ACCOUNT NO. _____		
Officer to Contact: _____	Line of Credit: Amount \$ _____	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		
CITY/CD				
Primary Bld. Mktg.: VRI STATE	NAME: WHOLESALE	STREET/CITY/STATE/ZIP: HICKORY HILLS, IL	PHONE: (708) 599-9770	LINE OF CREDIT: _____
Secondary Bld. Mktg.: HOME DEPOT		DES MOINES, IA	1800 494-1946	
Concrete Store: BERNARD'S		SOCIETY, IL	(708) 464-7253	
Other Trade: _____			(708) 464-7253	
MUST HAVE MINIMUM OF FOUR TRADE REFERENCES				

BY SIGNING BELOW I HEREBY CERTIFY THAT I AM THE OWNER, GENERAL PARTNER OR PRESIDENT OF THE ABOVE BUSINESS, AND I DO UNCONDITIONALLY AND IRREVOCABLY PERSONALLY GUARANTEE THIS CREDIT ACCOUNT AND PAYMENTS OF ANY AND ALL AMOUNTS DUE BY THE ABOVE BUSINESS, AND THAT I HAVE READ ALL OF THE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS APPLICATION AND UNDERSTAND AND AGREE TO THE SAME, AND THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. (APPLICATION MUST BE FULLY COMPLETED, SIGNED AND WITNESSED.)

X Witness \_\_\_\_\_

X Applicant: STEVE SMITH Date: 4/18/07

Print Name: STEVE SMITH

(If Applicant is a Partnership, then general Partner must sign the application.)

(If Applicant is a corporation, then President must sign the application.)

REV. 6/00

T/T

PENGD 800-631-6399

PLAINTIFF'S EXHIBIT

APR-20-2007 11:14 B4 Lumber 6307594841

**CONTRACTOR - COMMERCIAL CREDIT AGREEMENT TERMS AND CONDITIONS**

Applicant and Personal Guarantor(s) signing this Contractor - Commercial Credit Application ("Application") agree to accept credit extended by 84 Lumber Company and its affiliates and subsidiaries, including but not limited to 84 Components (collectively referred to herein as "84") subject to the following terms and conditions:

1. A NUMBER INVOICE SHALL BE FURNISHED WITH EACH PURCHASE. THE CUT-OFF DATE FOR MONTHLY BILLING IS THE TWENTY-FIFTH (25TH). A BILL/STATEMENT OF THE TRANSACTIONS WILL BE SENT TO APPLICANT AND MUST BE PAID IN FULL NO LATER THAN THE TENTH (10TH) OF THE MONTH NEXT FOLLOWING THE CUT-OFF-DATE; A FINANCE/LATE CHARGE WILL BE ASSESSED AT 1.5% PER MONTH, WHICH IS 18% PER ANNUM, ON THE BALANCE THAT IS PAST DUE;
2. Applicant agrees to grant and 84 is retaining a Purchase Money Security Interest under the Uniform Commercial Code on the building materials purchased on Applicant's account until such building materials are paid for in full;
3. All billing errors must be reported to the 84 Credit Department in writing within thirty (30) days after 84 has sent Applicant the first statement on which the error appears. Applicant agrees to immediately notify the 84 Credit Department in writing of any unauthorized purchases on Applicant's account;
4. 84 shall have the right to rely upon all reasonable representations of persons representing themselves to be agents of Applicant as to authority to make purchases on Applicant's account unless the 84 Credit Department receives prior written notification from Applicant limiting agents authorized to make purchases;
5. Applicant agrees to have an agent at job sites to sign invoices or bills of lading. Failure to do so will constitute a legal acceptance by Applicant of building materials delivered even though no invoice or bill of lading has been signed. Applicant must notify the applicable 84 store in writing of all claims for errors, shortages, damages and defects within twenty-four (24) hours of delivery;
6. Applicant agrees to furnish the applicable 84 store with an address and legal description for each job site where purchased building materials are used;
7. 84 has the right to close Applicant's account at any time, with or without cause, change the terms and conditions or sell, assign or transfer Applicant's account upon written notification to Applicant from the 84 Credit Department. Applicant agrees to notify the 84 Credit Department in writing of Applicant's desire to close Applicant's account, change of address, ownership, company name or change in legal business status;
8. **IF THIS ACCOUNT IS PLACED FOR COLLECTION, APPLICANT AND PERSONAL GUARANTOR(S) AGREE TO PAY 84 REASONABLE ATTORNEYS FEES AND COSTS, INCLUDING FEES AND COSTS FOR MECHANIC'S LIENS;**
9. Applicant and Personal Guarantor(s) hereby authorize any and all banks, credit reporting agencies, principal trade references listed on this Application, or any other credit source available to furnish credit information to 84. Applicant gives 84 permission to furnish business solicitation information about Applicant to third parties;
10. Applicant agrees that any credit extended hereunder is strictly commercial credit and does not arise out of a consumer transaction and is therefore not governed by applicable federal or state consumer credit regulations;
11. The entire agreement of the parties is set forth in this written document and there are no other oral or written understandings, promises, representations or agreements. This Agreement cannot be modified or amended except by a written document signed by both Applicant and the 84 Credit Department; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. This Agreement shall take precedence, supersede and control over any conflicting or additional terms contained in purchase orders, contracts or other similar documents issued or executed by the parties and no such documents shall be binding upon 84 unless approved and signed by an authorized officer of 84. Applicant understands and agrees that except for an authorized officer, no employees of 84 have the authority to sign contracts on behalf of 84. In the event that an 84 employee signs a contract with Applicant, such document shall not constitute a binding or valid contract unless later approved in writing by an authorized officer of 84;
12. The waiver or invalidity of any provision herein shall not affect the validity of any other provision herein;
13. In no event shall 84 be liable for liquidated, incidental, punitive or consequential damages in connection with building materials or installation purchased by Applicant. 84 disclaims any express or implied warranties of merchantability or fitness for a particular purpose on building materials or installation purchased by Applicant. In no event shall 84's liability exceed the replacement cost of building materials or installation.
14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania;
15. With the exception of actions by 84 to enforce liens or collect past-due amounts, 84 and Applicant agree that all disputes arising out of or relating to this Agreement, including but not limited to claims relating to building materials or installation, shall be settled by final and binding arbitration in Pittsburgh, Pennsylvania in accordance with the Construction Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof;
16. **JURY WAIVER. APPLICANT AND GUARANTOR(S) EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY TRANSACTIONS CONTEMPLATED HEREBY;**
17. All written notices to 84 by Applicant required under this Agreement shall be sent Certified Mail - Return Receipt Requested to: 84 Lumber Company, Credit Department, Building #2, 1019 Route 519, Eighty Four, Pennsylvania 15330-3810;
18. Applicant agrees not to withhold, setoff, deduct or retain payment against amounts due 84 on this Account for any other claims or charges.